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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re Simon S. Chan,
SSN xxx xx 7191,

Debtor.

CHAPTER 7

CASE NO. 18-40217 CN 7

ADV. NO. 18-04060

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT
AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Scott Frazer, Alan Miller, William Chan,
Michelle Chan, Jeff Chang, Tomas Velken
and Julie Lam

Plaintiffs

v.

Simon S. Chan,
Defendant.

Date: May 6, 2019
Time: 10:00 a.m.
Dept: 215

1
2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that on May 6, 2019 at 10:00 a.m., or as soon as the matter
4 may be heard, in Department 215 of the above-captioned court, located at 1300 Clay Street,
5 #300, Oakland, California 94612, plaintiffs will move the Court for summary judgment of their
6 First Amended Complaint.

7 Plaintiffs will seek summary judgment in their favor on their First Amended Complaint
8 and the causes of action under 11 U.S.C.A. §§ 523(a)(2)(A) and (a)(6) stated therein, and that
9 Defendant's debt to the Plaintiffs is nondischargeable. The basis for summary judgment is that
10 the judgment finding Defendant liable to Plaintiffs for fraud, entered in *Frazer v. Chan*, Contra
11 Costa County Superior Court case no. CIVMSC-14-00633 establishes as a matter of collateral
12 estoppel each of the elements of Plaintiffs' nondischargeability claims under 11 U.S.C.A. §§
13 523(a)(2)(A) and (a)(6). The state court judgment is therefore binding on Defendant, and the
14 amounts Defendant owes Plaintiffs under that judgment are nondischargeable.

15 This motion is based upon this notice of motion and motion, the memorandum of points
16 and authorities below and accompanying request for judicial notice, and the files and records of
17 the Court, and any oral argument that the Court may receive at the hearing.

18
19 Dated: March 28, 2019

Ramsey Law Group

20 /s/ Hussein Saffouri

21 Attorneys for Julie Lam and Jeff Chang

22
23 Dated: March 28, 2019

Walsh Law Firm

24 /s/ James R. Walsh

25 Attorneys for Michael Scott Frazer, Alan
26 Miller, William Chan, Michelle Chan, Jeff
27 Chang, Tomas Velken and Julie Lam
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I.	INTRODUCTION	6
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	7
III.	ARGUMENT	10
A.	Issue preclusion (collateral estoppel) is proper grounds for summary judgment where it bars re-litigation of an issue previously decided.....	10
B.	California’s law of collateral estoppel applies in this case to give issue preclusive effect to the State Court Judgment, establishing the elements of the Plaintiffs’ nondischargeability claims	11
C.	The elements of the Plaintiffs’ § 523(a)(2)(A) claim are all decided in the State Court Judgment	12
D.	The elements of the Plaintiffs’ § 523(a)(6) claim are also decided in the State Court Judgment because it awards punitive damages for fraud.....	14
IV.	CONCLUSION	16

1 **MEMORANDUM OF POINTS AND AUTHORTIES**

2 **Table of Authorities**

3
4 **Cases**

5	<i>Barker v. Hull</i> , 191 Cal.App.3d 221 (1987).....	11
6	<i>Bugna v. McArthur (In re Bugna)</i> , 33 F.3d 1054 (9 th Cir.1994).....	10
7	<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)	9
8	<i>Clark v. Bear Stearns & Co., Inc.</i> , 966 F.2d 1318 (9 th Cir.1992).....	11
9	<i>Gallenkamp v. Superior Court</i> , 221 Cal.App.3d 1, 10 (1990).....	11
10	<i>Grogan v. Garner</i> , 498 U.S. 279, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991)	10
11	<i>In re Bammer</i> , 131 F.3d 788 (9 th Cir.1997)	14
12	<i>In re Cecchini</i> , 780 F.2d 1440 (9 th Cir.1986).....	14
13	<i>In re Diamond</i> , 285 F.3d 822 (9 th Cir.2002).....	12, 13
14	<i>In re Franklin</i> , 179 B.R. 913 (Bankr. E.D. Cal. 1995)	12
15	<i>In re Jogert, Inc.</i> , 950 F.2d 1498 (9 th Cir.1991).....	12
16	<i>In re Kelly</i> , 182 B.R. 255, 258 (9th Cir. BAP 1995).....	11
17	<i>In re Khaligh</i> , 338 B.R. 817 (9 th Cir. BAP 2006)	10
18	<i>In re Molina</i> , 228 B.R. 248 (B.A.P. 9th Cir. 1998)	14
19	<i>Lucido v. Superior Court</i> , 51 Cal.3d 335 (1990)	11
20	<i>Marrese v. Am. Academy of Orthopaedic Surgeons</i> , 470 U.S. 373, 105 S.Ct. 1327, 84 L.Ed.2d 274 (1985)	10
21	<i>Migra v. Warren City School Dist. Bd. of Educ.</i> , 465 U.S. 75, 104 S.Ct. 892, 79 L.Ed.2d 56 (1984)	10
22	<i>Mueller v. J. C. Penney Co.</i> 173 Cal.App.3d 713 (1985)	11
23	<i>Stewart v. Ragland</i> , 934 F.2d 1033 (9 th Cir.1991)	12
24	<i>Todhunter v. Smith</i> , 219 Cal. 690 (1934).....	11
25	<i>Younie v. Gonya (In re Younie)</i> , 211 B.R. 367 (9th Cir. BAP 1997).....	12

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Statutes

11 U.S.C.A. § 523(a)(2)(A) passim

11 U.S.C.A. § 523(a)(6) passim

28 U.S.C. § 1738 10

Cal.Civ.Code § 3294 14

Other Authorities

9 Witkin Sum. Cal. Law Torts § 772 8, 13

Rest.2d Judgments, § 27 11

1 **I. INTRODUCTION**

2 The Court should grant summary judgment in favor of Plaintiffs on their First Amended
3 Complaint, and hold Defendant's debt to Plaintiffs nondischargeable because the findings of the
4 Contra Costa County Superior Court in its judgment awarding Plaintiffs compensatory and
5 punitive damages against Defendant for fraud are binding on Defendant in this case. The
6 findings in the state court judgment establish as a matter of collateral estoppel each of the
7 elements of Plaintiffs' claims under 11 U.S.C.A. §§ 523(a)(2)(A) and (a)(6), and, therefore, that
8 the amounts Defendant owes the Plaintiffs as stated in that judgment are nondischargeable due
9 to fraud.

10 Issue preclusion applies in nondischargeability proceedings such as this one to give
11 binding effect to a prior state court judgment. Where a prior state court judgment is found to
12 have issue preclusive effect, summary judgment is proper. The state court judgment in this case
13 has such issue preclusive effect because it decided each of the issues posed in the
14 nondischargeability claims before this Court.

15 The elements of fraud under California law are identical to the elements of fraud under
16 § 523(a)(2)(A). Thus the issues posed to the bankruptcy court in a § 523(a)(2)(A) claim are
17 identical to those decided by California state court judgment finding fraud. Furthermore, an
18 award of punitive damages for fraud under California law includes the additional element of
19 intent under § 523(a)(6). Thus the issues posed to the bankruptcy court in a § 523(a)(6) claim
20 are identical to those decided by a California judgment awarding punitive damages for fraud
21 under state law.

22 As a result, in this case, the state court judgment conclusively establishes, as a matter of
23 collateral estoppel, each of the elements of Plaintiffs' §§ 523(a)(2)(A) and (a)(6) claims because
24 it finds Defendant liable for fraud against Plaintiffs and awards Plaintiffs compensatory and
25 punitive damages against Defendant as a result.

26 In sum, the superior court's judgment has issue preclusive effect in this case, and the
27 Court should grant summary judgment in Plaintiffs' favor and find Defendant's debt
28

1 nondischargeable. Indeed, the state court found Defendant to be a crook and a liar. He cannot
2 get around that here.

3 4 **II. FACTUAL AND PROCEDURAL BACKGROUND**

5 Defendant Chan was the driving force behind an investment scheme which defrauded the
6 Plaintiffs of hundreds of thousands of dollars. Request for Judicial Notice [“RJN”] Exh. 1
7 (Statement of Decision [“SD”] at 1:19-2:1). As a result of that scheme, and due to Defendant’s
8 incompetence and dishonesty, instead of participating in the purchase, lease and sale of two
9 multi-unit condominium buildings in Beijing, China, as Defendant represented they would, the
10 Plaintiffs were left with two empty, partially finished units in a near-vacant high-rise building in
11 Beijing which are held in Defendant’s name. *Id.*

12 Defendant was the only promoter of this scheme with any business experience in China,
13 and was held out to investors as a Manager of the LLCs set up to carry out the investments. SD
14 at 2:15-18. The PPM identified Chan as the Manager, indicated that Management had extensive
15 experience in the investment real estate market in China, and stated that Defendant Chan had
16 been successfully developing real estate opportunities in China. RJN Exh. 1 (SD at 2:26-3:8).
17 None of this was true. RJN Exh. 1 (SD at 3:10).

18 Chan received funds from Plaintiffs, but he never provided an accounting or any records
19 reflecting disbursements from these funds. RJN Exh. 1 (SD at 5:11-25; 6:1-7). Instead,
20 Defendant deposited the funds into his personal bank accounts, and placed title to the units into
21 his own name. RJN Exh. 1 (SD at 5:7-8; 6:5-7). Defendant kept all of this concealed from
22 Plaintiffs, even when they met with him to get information about their investments, until well
23 after they filed litigation against him. RJN Exh. 1 (SD at 5:8-9; 7:7-16). Instead, he made
24 misrepresentations to them about the status of the investment, and its prospects. *Id.* After the
25 death of another promoter of the investment scheme and Plaintiffs gained access to his records,
26 they learned for the first time that their investment funds had been forwarded to Defendant’s
27 personal accounts in China, and they filed suit in the California Superior Court. RJN Exh. 1 (SD
28

1 at 7:26-8:3). That action, *Frazer et al. v. Chan*, Contra Costa County Superior Court case no.
2 CIVMSC-14- 00633 (the “State Court Case”), was tried to the court in July, 2017.

3 At the conclusion of the trial, the court in the State Court Case ruled on the following
4 causes of action stated in Plaintiffs’ second amended complaint: intentional fraud and deceit
5 (first cause of action), negligent misrepresentation (second cause of action), breach of fiduciary
6 duty (fourth cause of action), unfair business practice (fifth cause of action) and unjust
7 enrichment (sixth cause of action). The court concluded that “Plaintiffs are entitled to recover
8 under each of these legal theories except for the second cause of action.”¹ RJN Exh. 1 (SD at
9 8:7-12). The court also found against Defendant on the claims in his cross-complaint. RJN Exh.
10 1 (SD at 15:20-16:2; 16:19-21; 16: 22-17:2; 17:4-7).

11 The Superior Court supported its ruling on Plaintiffs’ cause of action with a lengthy
12 Statement of Decision. The Statement of Decision explained the court’s finding on Plaintiffs’
13 cause of action for Intentional Fraud and Deceit as follows:

14 Intentional Fraud and Deceit

15 The elements of fraud are “(a) misrepresentation (false
16 representation, concealment, or nondisclosure); (b) knowledge of
17 falsity (or “scienter”); (c) intent to defraud, i.e., to induce
18 reliance; (d) justifiable reliance; and (e) resulting damage.”⁹
19 Witkin Sum. Cal. Law Torts § 772. “It is not essential to liability
20 for fraud that the person charged should have received any
21 benefit.” Ibid.

22 All of the elements of fraud are present in this case. Defendant
23 Chan knowingly misrepresented his background and experience
24 in developing and managing Chinese real estate in the PPM. He
25 did this to induce Plaintiffs’ reliance on his expertise so that they
26 would invest in Dragonwood. Plaintiffs’ reliance was actual and
27 justified. They have also suffered resulting damage through the
28 loss of the money they invested. Defendant Chan’s fraudulent
conduct and intentional concealment also occurred with respect to
the commingling of funds detailed above. The Dragonwood
Operating Agreement represented that the funds invested with the
company would not be commingled with the manager’s personal
assets and that the funds and assets of the company would not be
employed in any manner except for the exclusive benefit of the
company. These representations were also knowingly false as
evidenced by Defendant Chan’s commingling of investor funds
with his personal accounts and his holding title to the units in his

¹ Plaintiffs request that the Court take judicial notice of the state court judgment and statement
of decision pursuant to FRE 201.

1 name and his wife's name, both of which occurred almost
2 immediately after the Plaintiffs made their investment. Evidence
3 of his fraudulent intent is also clear in his destruction of all
4 written records regarding the purchase and build-out of the units,
as well as his failure to disclose that he had left the company in
2008 and moved back to the United States, thereby essentially
abandoning these investment properties.

5
6 RJN Exh. 1 (SD at 8:14-9:15). The superior court awarded Plaintiffs the following relief:

7 Julie Lam: \$212,500 investment plus \$160,609 interest. Total
\$373,109.

8 Scott Frazer: \$150,000 investment plus \$113,371 interest. Total
\$263,371.

9 Jeff Chang: \$75,000 investment plus \$56,685 interest. Total
10 \$131,686.

11 Bill & Michelle Chan: \$75,000 investment plus \$56,685 interest.
Total \$131,686.

12 Tom Velken: \$75,000 investment plus \$56,685 interest. Total
\$131,686.

13 Alan Miller: \$75,000 investment plus \$56,685 interest. Total
14 \$131,686.

15 RJN Exh. 1 (SD at 14:5-10). The superior court also imposed a constructive trust over
16 Defendant's interest in the properties in China (RJN Exh. 1 (SD at 14:12-13)) and found
17 Plaintiffs to be entitled to punitive damages. RJN Exh. 1 (SD 17:17-18).

18 After the court in the State Court Case issued its Statement of Decision, Defendant
19 commenced this bankruptcy proceeding. Plaintiffs sought and obtained relief from the
20 automatic stay to procure a monetary judgment in the State Case, including punitive damages as
21 set forth in a stipulation between Plaintiffs and the Chapter 7 Trustee. RJN Exh. 2 (Stipulation
22 for Entry of Judgment); and RJN Exh. 3 (Order for Relief from Stay). Following entry of the
23 order for relief from stay, and based on the stipulation between Plaintiffs and the Chapter 7
24 Trustee, the superior court entered judgment (the "State Court Judgment") in favor of Plaintiffs
25 and against Defendant awarding Plaintiffs compensatory and punitive damages. RJN Exh. 4
(Judgment of the Contra Costa County Superior Court).

26 Plaintiffs also filed this adversary action, in which they assert 11 U.S.C.A. §§
27 523(a)(2)(A) and (a)(6) claims for relief, as established by this Court's June 18, 2018 order
28

1 granting in part and denying in part Defendant's Motion to Dismiss Plaintiffs' First Amended
2 Complaint. RJN Exh. 5 (Order Granting in Part and Denying in Part Defendant's Motion to
3 Dismiss and Order Continuing Status Conference entered in this action on June 19, 2018).

4 During the pendency of this matter, Defendant appealed the State Court judgment. On
5 December 10, 2018, the California Court of Appeal dismissed his appeal as untimely, and held
6 that Defendant was barred from filing another appeal. RJN Exh. 6 (Decision of the California
7 Court of Appeal in the State Court Case).

8 Following the ruling of the Court of Appeal, Defendant filed a petition for review with
9 the California Supreme Court. On February 18, 2019 the California Supreme Court denied
10 Defendant's petition for review. RJN Exh. 7 (Order of the California Supreme Court in the
11 State Court Case). On March 4, 2019 the California Court of Appeal issued a remittitur
12 certifying that the decision entered in the State Court Case is final. RJN Exh. 8 (Remittitur of
13 the California Court of Appeal in the State Court Case).

14 **III. ARGUMENT**

15 **A. *Issue preclusion (collateral estoppel) is proper grounds for summary judgment where it bars re-litigation of an issue previously decided.***

16 A bankruptcy court may grant summary judgment when the pleadings and evidence
17 demonstrate "that there is no genuine issue as to any material fact and that the moving party is
18 entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106
19 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The issue preclusive effect of a prior state court judgment
20 may serve as the basis for granting summary judgment in dischargeability proceedings. *Grogan*
21 *v. Garner*, 498 U.S. 279, 284–85 & n. 11, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991) (holding that
22 the doctrine of issue preclusion applies in bankruptcy court actions seeking to except debts from
23 discharge); *Bugna v. McArthur (In re Bugna)*, 33 F.3d 1054, 1056 (9th Cir.1994); see also *In re*
24 *Khaligh*, 338 B.R. 817, 832 (9th Cir. BAP 2006).

25 Thus, so long as a creditor demonstrates that the elements of issue preclusion are
26 satisfied, the bankruptcy court must apply collateral estoppel on an issue fully and fairly
27 litigated in another court. *In re Bugna*, 33 F.3d at 1057-58. In determining the collateral
28 estoppel effect of a state court judgment, federal courts apply that state's law of collateral

1 estoppel.” *Id.* at 1057; *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 81, 104
2 S.Ct. 892, 896, 79 L.Ed.2d 56 (1984) (Federal courts “must give to a state-court judgment the
3 same preclusive effect as would be given that judgment under the law of the state in which the
4 judgment was rendered.”); *Nourbakhsh*, 67 F.3d , 798, 800 (9th Cir. 1995) (citing *Marrese v.*
5 *Am. Academy of Orthopaedic Surgeons*, 470 U.S. 373, 380, 105 S.Ct. 1327, 1331–32, 84
6 L.Ed.2d 274 (1985) and 28 U.S.C. § 1738, the Full Faith and Credit statute).

7 ***B. California’s law of collateral estoppel applies in this case to give issue preclusive***
8 ***effect to the State Court Judgment, establishing the elements of the Plaintiffs’***
9 ***nondischargeability claims***

10 Under California collateral estoppel law, the State Court Judgment has collateral estoppel
11 effect with respect to the Plaintiffs’ nondischargeability claims in this case. Specifically its
12 rulings in favor of the Plaintiffs on their fraud claims in the State Court Case establish each
13 element of the nondischargeability claims in this case. As a result, summary judgment in favor
14 of the Plaintiffs is appropriate on the nondischargeability claims.

15 Under California law, the application of collateral estoppel requires that:

- 16 (1) The issue sought to be precluded from relitigation must be
17 identical to that decided in a former proceeding;
- 18 (2) The issue must have been actually litigated in the former
19 proceeding;
- 20 (3) It must have been necessarily decided in the former
21 proceeding;
- 22 (4) The decision in the former proceeding must be final and on
23 the merits; and
- 24 (5) The party against whom preclusion is sought must be the same
25 as, or in privity with, the party to the former proceeding.

26 *Clark v. Bear Stearns & Co., Inc.*, 966 F.2d 1318, 1320 (9th Cir.1992); *In re Kelly*, 182 B.R.
27 255, 258 (9th Cir. BAP 1995), *aff’d*, 100 F.3d 110 (9th Cir.1996); *see also Lucido v. Superior*
28 *Court*, 51 Cal.3d 335, 341 (1990), *cert. denied*, 500 U.S. 920, 111 S.Ct. 2021, 114 L.Ed.2d 107
(1991). If these elements are satisfied, the first judgment “operates as an estoppel or conclusive
adjudication as to such issues in the second action as were actually litigated and determined in
the first action.” *Todhunter v. Smith*, 219 Cal. 690, 695 (1934).

Each of these elements is satisfied in this case with respect to both the §523(a)(2)(A) and
the § 523(a)(6) claims.

1 There is no doubt that the elements of the fraud claims were actually litigated and
2 necessarily decided in the State Case, as those claims were tried to judgment. SD at 8:7-12.
3 “The Restatement Second of Judgments provides: ‘When an issue of fact or law is actually
4 litigated and determined by a valid and final judgment, and the determination is essential to the
5 judgment, the determination is conclusive in a subsequent action between the parties, whether
6 on the same or a different claim.’ (Rest.2d Judgments, § 27, p. 250.)” (*Barker v. Hull*, 191
7 Cal.App.3d 221, 226 (1987), *quoting* Rest.2d, Judgments § 27, Comment d. As a result, the
8 second and third elements of collateral estoppel are satisfied.

9 Also, the State Court Judgment is final and free from further review, as defendant has
10 exhausted his appeals. “For purposes of collateral estoppel, a judgment free from direct attack is
11 a final judgment.” *Mueller v. J. C. Penney Co.* 173 Cal.App.3d 713, 719 (1985). Indeed,
12 following the California Court of Appeals’ dismissal of defendant’s appeal, and the California
13 Supreme Court’s denial of his petition for review, the remittitur of the Court of Appeal vested
14 finality to the State Court Judgment. *Gallenkamp v. Superior Court*, 221 Cal.App.3d 1, 10
15 (1990); *see* RJN Exhs. 6-8. As a result, the fourth element of collateral estoppel is satisfied.

16 There is also no doubt that the same parties are involved in both proceedings; the
17 plaintiffs and the defendant in this case are identical to the parties, and in the same posture, as in
18 the State Case. As a result, the fifth element of collateral estoppel is satisfied.

19 Thus, the second through fifth elements of collateral estoppel are satisfied. As discussed
20 in detail in below, the first element of collateral estoppel is also met, as each element of the
21 Plaintiffs’ §523(a)(2)(A) and the §523(a)(6) claims was decided in the State Court Judgment’s
22 ruling on the Plaintiffs’ causes of action for intentional fraud and deceit and for negligent
23 misrepresentation.

24 ***C. The elements of the Plaintiffs’ § 523(a)(2)(A) claim are all decided in the State Court Judgment***

25 A judgment which finds that the elements of fraud under California law exist also
26 establishes that elements of nondischargeable fraud in bankruptcy under § 523(a)(2)(A) exist,
27 because the elements of California civil fraud are identical to the essential elements of
28

1 nondischargeable fraud in bankruptcy under § 523(a)(2)(A). *In re Franklin*, 179 B.R. 913, 928
2 (Bankr. E.D. Cal. 1995)

3 To establish that a debt is nondischargeable, plaintiffs must show that (1) the debtor made
4 the representations; (2) at the time he knew they were false; (3) he made them with the intention
5 and purpose of deceiving the creditor; (4) the creditor relied on such representations; and (5) the
6 creditor sustained alleged loss and damage as the proximate result of such representations. *In re*
7 *Diamond*, 285 F.3d 822, 827 (9th Cir.2002). These elements “mirror the elements of common
8 law fraud” and match those for actual fraud under California law, which requires that plaintiffs
9 show: (1) misrepresentation; (2) knowledge of the falsity of the representation; (3) intent to
10 induce reliance; (4) justifiable reliance; and (5) damages.² *In re Jogert, Inc.*, 950 F.2d 1498,
11 1504 (9th Cir.1991) (*quoting Stewart v. Ragland*, 934 F.2d 1033, 1043 (9th Cir.1991)); *see also*
12 *Younie v. Gonya (In re Younie)*, 211 B.R. 367, 373–74 (9th Cir. BAP 1997), *aff’d*, 163 F.3d 609
13 (9th Cir.1998) (table decision).

14 The State Court Judgment ruled in favor of plaintiffs on each of the elements of their
15 fraud claims, finding in their favor on each of the elements of their claim for Intentional Fraud
16 and Deceit as follows:

17 Intentional Fraud and Deceit

18 The elements of fraud are “(a) misrepresentation (false
19 representation, concealment, or nondisclosure); (b) knowledge of
20 falsity (or “scienter”); (c) intent to defraud, i.e., to induce
21 reliance; (d) justifiable reliance; and (e) resulting damage.” 9
22 Witkin Sum. Cal. Law Torts § 772. “It is not essential to liability
23 for fraud that the person charged should have received any
24 benefit.” *Ibid*.

25 All of the elements of fraud are present in this case. Defendant
26 Chan knowingly misrepresented his background and experience
27 in developing and managing Chinese real estate in the PPM. He
28 did this to induce Plaintiffs’ reliance on his expertise so that they
would invest in Dragonwood. Plaintiffs’ reliance was actual and
justified. They have also suffered resulting damage through the
loss of the money they invested. Defendant Chan’s fraudulent
conduct and intentional concealment also occurred with respect to
the commingling of funds detailed above. The Dragonwood
Operating Agreement represented that the funds invested with the

² Under California law, the elements of promissory fraud are identical to the elements of
common law fraud. *Service by Medallion, Inc. v. Clorox Co.*, 44 Cal.App.4th 1807, 1816 (1996).

1 company would not be commingled with the manager's personal
2 assets and that the funds and assets of the company would not be
3 employed in any manner except for the exclusive benefit of the
4 company. These representations were also knowingly false as
5 evidenced by Defendant Chan's commingling of investor funds
6 with his personal accounts and his holding title to the units in his
7 name and his wife's name, both of which occurred almost
8 immediately after the Plaintiffs made their investment. Evidence
9 of his fraudulent intent is also clear in his destruction of all
10 written records regarding the purchase and build-out of the units,
11 as well as his failure to disclose that he had left the company in
12 2008 and moved back to the United States, thereby essentially
13 abandoning these investment properties.

14 RJN Exh. 1 (SD at 8:14-9:15). In short, the State Court Judgment decides, in Plaintiffs' favor
15 that there was, by Defendant: "(a) misrepresentation (false representation, concealment, or
16 nondisclosure); (b) knowledge of falsity (or "scienter"); (c) intent to defraud, i.e., to induce
17 reliance; (d) justifiable reliance; and (e) resulting damage," which constitute each of the
18 elements each of the elements that establish a debt is nondischargeable: (1) the debtor made the
19 representations; (2) at the time he knew they were false; (3) he made them with the intention
20 and purpose of deceiving the creditor; (4) the creditor relied on such representations; and (5) the
21 creditor sustained alleged loss and damage as the proximate result of such representations.³ *In*
22 *re Diamond*, 285 F.3d at 827.

23 In sum, the superior court's final judgment expressly and in detail decides each of the
24 elements of actual fraud under California law, which necessarily decides the identical elements
25 of nondischargeable fraud in bankruptcy under § 523(a)(2)(A). The elements of Plaintiffs' §
26 523(a)(2)(A) claim are therefore established and may not be relitigated, and judgment in favor
27 of Plaintiffs on that claim is proper as a matter of law.

28 ***D. The elements of the Plaintiffs' § 523(a)(6) claim are also decided in the State Court Judgment because it awards punitive damages for fraud***

The State Court Judgment also establishes the elements of nondischargeability under §
523(a)(6) because it awards the Plaintiffs punitive damages. The elements of
nondischargeability under § 523(a)(6) elements are: (1) a wrongful act, (2) done intentionally,

³ The element of damages is established, of course, because the superior court granted the Plaintiffs damages. RJN Exh. 1 (SD at 14:5-10); RJN Exh. 4 (State Court Judgment at 2:8-17 and 17:5-10).

1 (3) which necessarily causes injury, and (4) is done without just cause or excuse. *In re Cecchini*,
2 780 F.2d 1440, 1443 (9th Cir.1986). This definition does not require malice or a showing of an
3 intent to injure, but rather it requires only an intentional act which causes injury. *In re*
4 *Bammer*, 131 F.3d 788, 791 (9th Cir.1997).

5 An award by a California court of punitive damages for fraud necessarily includes a
6 finding of malice and thus satisfies that element under § 523(a)(6). *In re Molina*, 228 B.R. 248,
7 251–52 (B.A.P. 9th Cir. 1998) That is because under Cal.Civ.Code § 3294 intent to injure is a
8 prerequisite to such an award. Cal.Civ.Code § 3294 provides in relevant part as follows:

9 (a) In an action for the breach of an obligation not arising from
10 contract, where it is proven by clear and convincing evidence that
11 the defendant has been guilty of oppression, fraud, or malice, the
12 plaintiff, in addition to the actual damages, may recover damages
13 for the sake of example and by way of punishing the defendant.

14

15 (c) As used in this section, the following definitions shall apply:

16

17 (3) ‘Fraud’ means an intentional misrepresentation, deceit, or
18 concealment of a material fact known to the defendant with the
19 intention on the part of the defendant of thereby depriving a
20 person of property or legal rights or otherwise causing injury.

21 Thus, an award of punitive damages under Cal.Civ.Code § 3294 establishes three of the
22 four elements of nondischargeability under § 523(a)(6): a wrongful act, done intentionally, and
23 intended to injure. *In re Molina*, 228 B.R. at 251–52.

24 Thus, in this case, the superior court’s finding that Plaintiffs were entitled to punitive
25 damages established that Defendant engaged in: a wrongful act, done intentionally, and
26 intended to injure.⁴ RJN Exh. 1 (SD 17:17-18); RJN Exh. 4 (State Court Judgment at 2:15-17).
27 The superior court’s award of damages to the Plaintiffs established the fourth element of
28 Plaintiffs’ § 523(a)(6) claim. RJN Exh. 1 (SD at 14:5-10; RJN Exh. 4 (State Court Judgment at
2:8-17 and 17:5-10). Thus, the State Court Judgment established each of the elements of
nondischargeability under § 523(a)(6). Its findings have collateral estoppel in this case and are

⁴ The superior court ruled in its Statement of Decision that the Plaintiffs were entitled to
punitive damages, but left the amount to be determined at a later phase of the case. The amount
was ultimately decided by stipulation between the Plaintiffs and the Chapter 7 Trustee.

1 binding, and as a result judgment in favor of Plaintiffs on this claim too, is proper as a matter of
2 law.

3 **IV. CONCLUSION**

4 For the reasons discussed above, the Court grant summary judgment in favor of Plaintiffs
5 on the causes of action for 11 U.S.C.A. §§ 523(a)(2)(A) and (a)(6) stated by their First
6 Amended Complaint, and hold Defendant's debt to Plaintiffs as set forth in the State Court
7 Judgment, nondischargeable.

8
9
10 Dated: March 28, 2019

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11 /s/ Hussein Saffouri

12 Attorneys for Julie Lam and Jeff Chang

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14 Dated: March 28, 2019

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